IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 3RD OCTOBER 2006 / 11TH ASWINA 1928

MFA.No. 625 of 1999()

OPMV.529/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THODUPUZHA

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APPELLANT:

THE NEW INDIA ASSURANCE CO.LTD. REPRESENTED
BY THE ASSISTANT MANAGER, REGIONAL OFFICE,
36/707, KANDAMKULATHY TOWERS, P.B.NO.1049,
M.G.ROAD, ERNAKULAM, COCHIN-682 011.

BY ADV. SRI.M.JACOB MURICKAN

RESPONDENTS:

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1. NAITHY, W/O.LUKOSE, KOLAVELIL HOUSE,
KURUMULLOOR P.O., ETTUMANOOR, KOTTAYAM.

2. P.K. SUDHAKABAN, S/O.KUMARAN, PEZHATHANIYIL,
KARUNAPURAM, CUMBUMMETTU.

3. HASSAN @ GEORGE, S/O.HANEEF,
PUTHUPPARAMBIL HOUSE, CUMBUMMETTU.

BY ADV. SRI.S.SACHITHANANDA PAI
SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 03/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Thottathil B. Radhakrishnan, J.

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M.F.A.No.625 of 1999

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Dated this the 3rd day of October, 2006.

JUDGMENT

The first respondent, a passenger in a jeep owned by the second respondent and driven by the third respondent suffered injuries as a result of an accident in which that vehicle was involved. The claim petition was contested only by the insurer. It was contended that the vehicle was covered only by an Act Policy, which was produced as Ext.B1 and it was urged that the claimant, being only a passenger in a private jeep, will not be covered by the said policy.

2. The Tribunal found that the claimant is entitled to compensation and in paragraph 7 of the impugned judgment merely stated that it has come out in evidence that the vehicle is having a valid policy and accordingly mulcted the insurance company with the liability.

3. In this appeal by the insurer, it is urged

rightly that the issue is covered in favour of the appellant by the decision of the Apex Court in **United India Insurance Co.Ltd. v. Tilak Singh (2006 (4) S.C.C.404)** and that the appellant is not liable to be directed to satisfy the award. Following the said decision, this appeal is entitled to succeed.

In the result, this appeal is allowed holding that the appellant insurer is not liable to satisfy the impugned award. Respondents 2 and 3, who were respondents 1 and 2 before the Tribunal, will satisfy the impugned award and the first respondent herein, the claimant, will be entitled to recover the amounts covered by the award from them in execution of the award by the Tribunal, as modified by the appellate award. Having regard to the fact that an order of stay was issued on C.M.P.No.3436 of 1999, any amount in deposit will be released to the appellant on production of a copy of this judgment.

Thottathil B.Radhakrishnan,
Judge.

sl.

Thottathil B. Radhakrishnan, J.

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M.F.A.No.625 of 1999

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JUDGMENT

Dated:3-10-2006